

# Digital Audio Recording of Court Proceedings Policy and Procedures Manual

December, 2006



Wisconsin Court System

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The digital audio pilots conducted by the Director of State Courts office concluded in November of 2006. A committee is now being created to evaluate the pilots and make recommendations to the Director for the future use of digital audio recording as an alternative method of taking the record in the circuit courts. In order to allow the existing electronic monitor or others that may need to be hired to continue to use the digital audio units to take the record, the interim digital audio policy and procedures, that were approved by the Supreme Court in November of 2005, need to be extended. They will remain in effect until the new committee's recommendations can be implemented.

## SECTION 2.0

## DEFINITIONS

<b>Archiving:</b>	Long-term storage of the electronic media.
<b>Confidence Monitoring:</b>	The practice of periodically assessing the performance of the DAR unit to ensure that a sufficient verbatim record is being captured in a manner that will allow for a quality transcript to be completed.
<b>Colloquy:</b>	a discussion during a hearing between the judge and the defendant usually to ascertain the defendant's understanding of his or her rights and of the court proceedings
<b>Court Commissioner:</b>	Quasi-judicial officer who presides over court hearings.
<b>Court Official:</b>	A circuit judge, circuit court commissioner or a reserve judge
<b>Court Reporter:</b>	A stenographic or stenomask reporter who records and transcribes a verbatim report of all proceedings in a court of law.
<b>Electronic Monitor:</b>	An individual whose responsibilities entail operating the DAR device, making annotations\log notes, archiving the record, and coordinating the production of the transcript. For purposes of the pilots this includes both a court reporter and a non-court reporter.
<b>Stop Time:</b>	Chronological time when the court proceeding ended.
<b>Judge:</b>	A circuit court judge.
<b>Log Notes:</b>	An annotation that is descriptive (i.e. cross examination) regarding a court event, individual speaking and the time that it occurred.
<b>Record Verification:</b>	The monitoring of the electronic record after it has been archived to ensure that the record was captured in its entirety.
<b>Start Time:</b>	Chronological time when the court proceeding commenced.
<b>Storage:</b>	Long-term storage of the electronic media after the court event has been concluded.

## ACRONYMS

<b>CCAP:</b>	The Consolidated Court Automation Programs. This department is part of the Director of State Courts Office and is responsible for the information technology needs of the Wisconsin Court System.
<b>CD:</b>	Compact disk used to store large amounts of digital information
<b>COC:</b>	Clerk of Circuit Court
<b>DA:</b>	District Attorney
<b>DAR:</b>	Digital Audio Recording
<b>DAA:</b>	District Administrative Assistant. Provides administrative support in the District Court Administrator's Office including daily coordination of the court reporting coverage in courtrooms.
<b>DCA:</b>	District Court Administrator
<b>DSC:</b>	Director of State Courts
<b>EM:</b>	Electronic Monitor
<b>RIP:</b>	Register in Probate
<b>SCR:</b>	Supreme Court Rule
<b>SPD:</b>	State Public Defender
<b>TCA:</b>	Uniform rules for Trial Court Administration

## **SECTION 3.0                      COURTROOM GUIDELINES FOR MATTERS BEING RECORDED**

### **Opening Colloquy for Court Proceedings**

The following colloquy, stated at the beginning of a court session, is intended to assist the court official in capturing a sufficient record:

**These proceedings are being electronically recorded. Please speak clearly and directly into the microphone. Do not speak over each other. All responses must be made orally. Avoid gesturing or head nodding, as these gestures will not be captured for the record.**

### **General Guidelines for Recorded Court Proceedings**

The following are DAR guidelines for the judge when conducting a court hearing:

- All statements in the court proceeding must be made into a microphone.
- State case by name and number each time a case is called.
- Request parties to state their appearances (or state it for them).
- Attorney\Litigants should remain at their table when examining witnesses or addressing the court.
- Have the individual spell any unusual names.
- Verbally state when the court is on or off the record.
- Remind attorneys that they should take the necessary precautions (i.e. shield their mouth and/or cover the microphone) when they wish to consult with their client during the hearing. If the microphone has a mute function, they simply can mute the device. However, they will need to uncover the microphone or turn off the mute function when done.
- Anyone who is not part of the court proceeding should refrain from making noise. If this is not successful, the person should be asked to leave the courtroom.

## Signage

Signage is important for litigants, staff and the public when using digital audio recording devices. Signage provides an important reminder that the proceedings are recorded and that anything spoken may be recorded. The language on the signs should be brief and concise. The following is suggested language that should be placed at each table microphone, podium and on the commissioner's bench (if appropriate):

- The court may be electronically recording proceedings.
- Speak clearly and slowly into the microphone.
- Do not whisper.
- Do not speak over another person.
- Remain seated or at the podium.
- Mute microphone for private conversations.

The following is suggested language that should be at the entrance door and/or entry to the litigation area:

The court may be electronically recording proceedings. Silence in the gallery and litigation area is required. Remain seated and do not approach the bench until instructed to do so.

## Microphone Setup (4 Channel System)

Standard channel designations have been implemented in all courtrooms piloting the digital audio recording systems. The following is an example:

<b>Microphone Location</b>	<b>Channel Number</b>
Judge	1
Witness\Clerk\jury\Podium	2
Counsel Table (Plaintiff)	3
Counsel Table (Defendant)	4

When generating the verbatim record, this standard allows a transcriber when isolating channels to quickly ascertain who is speaking when multiple individuals are talking at the same time. The witness, clerk, jury and podium can be on the same channel due to the low probability that they will be all speaking at the same time.

## **SECTION 4.0 DIGITAL AUDIO RECORDING OF PROCEEDINGS**

### **Digital Audio Recording Without an EM**

There are times when court proceedings may be held when the Electronic Monitor is not available. In these situations an official court reporter or per diem court reporter should be used in place of the DAR equipment.

### **Daily Startup Procedures**

The EM is responsible for ensuring the DAR unit is ready for capturing the verbatim record for the day's court calendar. This includes, conducting a systems check, testing the court's sound system and DAR unit to ensure that both systems are functioning properly. In addition, the EM should review the court's calendar to prepare for matters that will involve significant annotation to the electronic record. The start up procedures for the DAR unit should be followed as provided by CCAP.

### **Quality Control During Court Proceeding**

It is the responsibility of the EM to ensure that a verbatim record is being captured. There will be times when the court proceedings need to be stopped due to technical and procedural issues, such as:

- Technical failure of the equipment
- Individuals not speaking clearly or into the microphone
- Parties talking over each other
- Excessive shuffling of papers
- Microphone remains muted
- Excessive gallery noise

The EM should consult with the presiding judge to establish an acceptable procedure for interrupting the court proceeding if a technical or procedural issue occurs, prior to going into court.

## **Objectives for the Creation of Log Notes**

The primary objective for the creation of log notes is to allow for a simplified search of the electronic record for the playback of testimony both during and after court proceedings as well as the creation of a transcript from the electronic record.

Log notes should be entered directly into the digital audio recording system. However, if a situation arises that warrants manual log notes then the minute sheet (General Form 130) should be used until the situation is rectified. The log notes would need to be converted into an electronic file and stored with the digital audio file of the court proceeding.

Two sets of requirements have been outlined that describe the duties of the individuals that operate the DAR equipment:

- I. If an EM is operating a digital audio recording system during proceedings that are high volume and not likely to have playback or transcription of the record required, then the following **minimum** standards must be met with regard to developing log notes for playback or the completion of a transcript:

- Judicial Officer (circuit judge or court commissioner)
- Caption/ Case Number
- Names of Parties and Spelling of Names
- Location or Branch
- Date
- Time proceeding starts
- Time proceeding stops

- II. If an EM is tasked to operate the digital audio recording equipment and there is a likelihood that transcripts will need to be generated; the following **minimum** standards must be met with regard to developing log notes for playback or the completion of a transcript:

:

- The Call of the Case – the judicial officer calls the case caption, case number. Enter the location, date and time started/time stopped.
- Names of Parties Present – each party present should introduce themselves on the record and spell their name. This assists with speaker identification for the transcription.
- Witness Names – before each witness testifies, they need to state and spell their name for the record. The witness oath should also be annotated.
- Opening Statement, Direct Examination, Cross Examination, Redirect Examination, Re-cross Examination, Voir Dire, Examination by the Judicial Officer, Rebuttal and Closing Statement.
- Objections – this is a very important item to log note. Make certain that the time and speaker are identified for quick search and playback.

- Exhibits – proper identification of exhibits requires that there is a log note clearly stating that it is offered and received and an identification of what the exhibit is.
- Orders – identify any orders issued from the bench.
- Nonverbal actions are noted when they affect the court record. Typical examples include jury in/out, pause, witness reviewing document(s), counsel confer regarding exhibit numbers off the record, and most importantly, when a witness responds with a nod of the head either affirmatively or negatively.

Off the record discussions may not be evident to the transcriber if they are not recorded clearly. Please log note “Off the Record” with times at the beginning and ending of this discussion.

## Confidence Monitoring

Confidence monitoring is the practice of periodically assessing the performance of the DAR unit to ensure that a sufficient verbatim record is being captured in a manner that will allow for a quality transcript to be completed, as required by SCR 72.05. This procedure is to be followed during court proceedings.

**Start of a court proceeding:** When a court proceeding is started the EM should monitor the visual dials on the DAR unit and conduct an initial confidence monitoring of the recording quality via the headset. This should include isolating each channel to verify that all are recording properly. If there appears to be a malfunction with the DAR unit that is resulting in an insufficient record being captured, the EM is to immediately notify the judge that the hearing should be stopped due to the problem. The EM is then to contact the CCAP Call Center for assistance.

**During a court proceeding:** During a court proceeding the EM should continue to monitor the visual dials on the DAR unit and conduct a confidence monitoring of the recording quality via the headset on an hourly basis. This should include isolating each channel to verify that all are recording properly. If there is or appears to be a malfunction with the DAR unit that is resulting in an insufficient record being captured, the EM is to immediately notify the judge that the hearing should be stopped due to the problem. The EM is then to contact the CCAP Call Center for assistance.

## Request For Audio Playback by a Court Official During Proceeding

When a court official requests a playback of the electronic record the EM shall stop the recording and commence with the playback over the sound system. Once completed the EM shall start recording the proceeding again. If statements are made while the recording is turned off, the EM should notify the court immediately to have them restated once the court proceeds on the record.

## Daily Shutdown Procedures

Upon completion of the court proceedings for the day, the EM is responsible for making sure the electronically recorded proceedings and related materials (Log notes and dictionary) are properly stored in the central audio library on the court system network. In addition, the DAR unit should be shut down in accordance with the procedures set forth by CCAP.

## SECTION 5.0 ARCHIVING AND STORAGE OF ELECTRONIC RECORD

### Archiving/Backup

Digital audio recordings shall be transferred daily from the hard drive of the digital audio system to the court system's central audio library for archiving. Upon successful transfer of the daily recordings, each file must be played back and checked for content and audibility.

### Labeling

A standard file-naming format must be established for digital audio recordings to ensure the court system's ability to accurately identify, retrieve and use those records for the duration of their retention period. Electronic files shall be named and labeled with the following 20-digit identifier:

4-digit year 2-digit month 2-digit day 2-digit county number 2-digit branch number 4-digit court official number and the electronic monitor's two initials.

### Playback Software

Specialized playback software will be available in the central audio library for all files stored in the library. This software is used to hear, start, stop, pause, search and isolate individual microphones during playback. The playback software will be retained for one year beyond the retention period of the last recording in the audio library that was created using that software.

### Maintaining Digital Audio Recordings

Digital audio recordings shall be retained and maintained in compliance with **SCR 72.05 Retention of court records maintained as official or original information on electronic or optical storage systems.**

### Retention Period

Digital audio recordings of court proceedings constitute a verbatim record under **SCR 71.03 Reporters' notes or other verbatim record.** The rule states: "The original notes of all court reporters or other verbatim record, made in open court or pursuant to an order of the court, constitute part of the records of the court in which made and are not the property of the court reporter."

The retention period for court reporter notes or other verbatim record of in-court proceedings is established as follows under **SCR 72.01(47) Court Reporter Notes.** "Verbatim stenographic, shorthand, audio or video notes produced by a court reporter or any other verbatim record of in-court proceedings: 10 years after the hearing."

## **SECTION 6.0 REQUEST FOR ELECTRONIC RECORD**

This section will outline the policy and procedures for requesting a written or electronic copy of a court proceeding. There are three ways for a digital audio recording to be requested:

- 1) Request for a written transcript
- 2) Request for an audio playback by a court official
- 3) Request for a copy of the electronic record.

Individuals requesting a transcript from a proceeding that was electronically recorded or a copy of a proceeding that had been electronically recorded should use the Transcript/Copy Request and Information Form (Appendix D). The form is to be filled out by either the requesting party or the EM. If the EM is completing the form for the requesting party he/she should read the form to the individual so that they are aware of their options and the costs.

### **Request For Written Transcript**

The production of transcripts under this section must be in accordance with Sections 6.0 and 9.0 of the Wisconsin Court System Court Reporter Manual.

The EM shall be the primary resource for transcript reproduction in matters s/he records for the court. If the EM is unable to generate a timely transcript from the electronic record, he/she shall consult with the DCA to seek workload assistance as required under TCA 9.

The title page and certification page of the transcript of an electronically recorded proceeding shall include the words "Digitally Recorded" in parenthesis following the designation of the type of proceedings (Appendix A and B). Fees assessed for the certified transcript shall be in accordance with those established by s. 814.69, Wis. Stats.

### **Request For Audio Playback by a Court Official (outside of court)**

Audio files stored in the central library are available for playback for all authorized court officials (judge, commissioner, administrative personnel). If an authorized court official asks for audio playback outside of court proceedings the EM shall accommodate in a manner that meets the need of the court official.

### **Request For A Copy Of The Electronic Record**

The Director of State Courts has promulgated electronic reporting standards in accordance with Supreme Court Rule 71.05(4) (see Administrative Bulletin 98-04). Under these standards if a member of the public wishes to purchase an electronic copy of the record in a matter that a transcript would be available to them, they may do so. If the desired recorded hearing falls under statutory rules for confidentiality, then the EM is to first seek permission from the responsible court official before releasing a copy of the proceedings.

The EM is responsible for the production of an electronic copy of the court proceedings for the branch s/he serves. The copies of the digital audio recordings will be reproduced onto a CD in the original format.

The EM should inform the requesting party that a CD or any electronic copy of a court proceeding is not a medium currently accepted by the court as the official certified transcript. The court will only accept certified typed transcripts for matters it has under review. An electronic copy allows the requester to review their proceeding and determine whether or not they wish to proceed with their court matter or purchase a written certified transcript.

During the course of the DAR pilots, the cost will be \$10 per CD and the EM will make arrangements so the requester picks up the CD from the Clerk of Circuit Courts' (COC) Office. The COC will provide the EM with a disk to prepare the requested copy. Once the copy is made, the EM will return it to the COC who then will collect and deposit the dollars associated with the CD copy.

## **SECTION 7.0            DAR ADMINISTRATION**

The EM is responsible for the administration of the DAR system in accordance with the policy and procedures set forth by the Director of State Courts and Supreme Court Rule. Day to day oversight is by the assigned judge; however, the EM must work in conjunction with the DCA office.

### **Technical Support, Maintenance and Repair**

Hardware and software failures may occur at anytime, but are most troublesome when in process of recording a hearing because the court record may be jeopardized. Proper setup and testing will minimize the chances of equipment failure during the hearing. (See Appendix X)

If there are problems with the DAR system, the EM is expected to follow the procedures provided by CCAP. If the problem still exists, the EM will contact the CCAP Call Center at 1-800-422-7137 for assistance.

If all efforts to operate the DAR unit fail, then the EM shall inform the appointing judge and DCA's office that the equipment is not available for recording court proceedings.

### **Supplies**

The state will pay for the equipment and some supplies required for the EM to perform his/her job duties. Supplies that are required for the production of transcripts are the responsibility of the EM. The DCA will authorize the request for any state paid supplies for the EM by submitting a purchase requisition to the DSC Purchasing Officer.

### **Disaster Recovery**

CCAP supports and maintains all of the computer hardware and software used by the circuit courts in Wisconsin. In the event of a disaster, CCAP is committed to immediately responding to ensure a circuit court's computer system is functional in a timely manner.

The presiding court official working in conjunction with the Chief Judge's office will provide direction to the EM as it relates his/her court reporting assignment.

### **Loss or Damage to DAR Equipment**

CCAP will be the initial point of contact for the EM if there is any loss or damage to the DAR equipment. The EM immediately must report any theft, loss or damage by calling the CCAP Call Center at 1-800-422-7137. CCAP will notify Management Services and the DCA of the reported problem and will advise the EM of any actions that need to be taken .

## Appendix A Title Page Sample

STATE OF WISCONSIN

CIRCUIT COURT  
SMALL CLAIMS

DODGE COUNTY

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ABC Company, LLC,

Plaintiff,

vs.

Case No. xx-SC-xxxxx

XYZ Company, LLC

Defendants.

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EVICTON HEARING (Digitally Recorded)

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December 20, 2004

PROCEEDINGS HELD BEFORE THE  
HONORABLE (Name)  
COURT COMMISSIONER, PRESIDING

### A P P E A R A N C E S:

Johnson & Jones LLP by attorney John Smith,  
xxxx South Generic Street Juneau, Wisconsin, 53039,  
appeared on behalf of the plaintiff.

Jefferson & Marsh, S.C. by Attorney John Baker,  
xxxx North Drive, Suite A, Juneau, Wisconsin, 53039,  
appeared on behalf of the defendant.

(Name of Electronic Monitor)  
Electronic Monitor

## Appendix B Certification Page

The certification page of the transcript should be similar to the following:

STATE OF WISCONSIN )  
 ) SS.  
ST. CROIX COUNTY )

I, Electronic Monitor for St. Croix County, Wisconsin, do hereby certify that I have carefully transcribed from and compared the foregoing pages with the original digital audio recording from said proceeding and that this transcript is true and correct to the best of my ability.

Dated this 18th day of August, 2005, at Hudson, Wisconsin.

(Name of Electronic Monitor)  
Electronic Monitor

## Appendix C

### TRANSCRIPT/COPY REQUEST FORM

Please complete the following information

Case Number \_\_\_\_\_ Case Name: \_\_\_\_\_ Date of Proceeding(s) \_\_\_\_\_

#### Contact Information:

Requestor's Name			Today's Date
Address	City	State	Zip
E-mail address (optional)			

#### Please check one of the following:

- ☐ I would like a written certified transcript.
- ☐ I would like a CD copy of the electronically recorded proceeding.  
☐ Payment enclosed (\$10). Please submit payment to: Clerk of Circuit Court of the County.
- ☐ I am unsure and would like to be called to discuss my options.

**Signature of Requestor:** \_\_\_\_\_

All arrangements for a certified transcript or copies of an electronically recorded proceeding are made directly with the EM by the requestor. You may call the EM directly or completely fill out this form and mail it to them.

#### TRANSCRIPT/COPY REQUEST INFORMATION

This form is used for the purpose of requesting a transcript or electronic copy of a court matter that was electronically recorded. This form **MUST** be completed entirely in order for the Electronic Monitor (EM) or Official Court Reporter to process your request timely. All the information requested above can be found in the case file.

An electronic recording device captured a verbatim record of your court proceeding. There are two ways in which this record can be reproduced upon request:

1. **Typed transcript from stenographic or electronically recorded proceeding:** A certified transcript of the court proceedings from the electronically recorded court proceeding will be created. The cost is based on the per page statutory rate. The transcript will be produced either by the EM or an Official Court Reporter. They will calculate the cost and may require full payment prior to generating the transcript. The arrangements for transcript production, delivery and payment are made directly with the EM or Official Court Reporter by the requestor.

The cost of a written certified verbatim transcript is:

- |  |                 |
|--|-----------------|
| a. Non-government/general public                     | \$2.25 per page |
| b. Governmental agencies                             | \$1.50 per page |
| c. Copies of a Certified Transcript                  | \$ .50 per page |
| d. Or otherwise provided in Wisconsin Statute 814.69 |                 |

Special Note: A certified transcript becomes part of the official court record. The advantage of a certified typed transcript allows for the requestor to utilize this information in further court proceedings.

2. **A copy of the electronically recorded proceeding:** A court proceeding that has been captured through the use of an electronic recording device can be, upon request, copied onto a compact disc (CD). The audio recording will be presented in a format that it was captured on. Free playback software for the recording is available through the vendor.

The cost of the copy is \$10 per CD.

Special Note: Pursuant to Supreme Court Rule 71.04(2) a CD or electronic copy is not considered the official transcript or record of a court proceeding. ***The circuit courts will only accept certified typed transcripts for matters it has under review.*** An electronic copy allows the requestor to review their proceeding and determine whether or not they wish to proceed with their court matter or the purchasing of a written certified transcript.